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Supreme Court, U.S.
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No. 02-1774

In the

Supreme Court of the United States

IN RE: FRED RIGGS, DONNA SINGER and AL DICKSON

A Petition for an Extraordinary Writ of Mandamus and Prohibition on appeal from the Tenth Circuit Court

PETITIONERS' PETITION FOR A REHEARING

Susan Rose
Counsel of Record
9553 South Indian Ridge Drive
Sandy, UT 84092
(801) 545-0441
Attorney for Petitioners

Mr. Wm. Battles
(Navajo Counsel on the Brief)

CURRY & TAYLOR ♦ WASH D.C. ♦ (202) 223-3160 ♦ USSCINFO.COM

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QUESTIONS PRESENTED

DID THIS COURT ERROR IN DENYING THE PETITIONER'S PETITION FOR A WRIT OF MANDAMUS BASED UPON THE FOLLOWING SEPARATION OF POWERS AND LACK OF SUBJECT MATTER JURISDICTIONAL ISSUES OF SUBSTANTIAL IMPORTANCE;

1) DOES THIS COURT OR ANY OTHER ARTICLE III COURT HAVE ANY CONSTITUTIONAL ORIGINAL JURISDICTION OR CONGRESSIONALLY DELEGATED OR OTHER LEGAL RESOURCES UPON WHICH TO RELY TO GRANT IT SUBJECT MATTER JURISDICTIONAL AUTHORITY TO DEMAND THAT AMERICAN TREATY-PROTECTED INDIAN COURTS CIVILLY DISTRIBUTE JUSTICE UNDER AMERICAN INDIAN LAWS BASED UPON RACE OR POLITICAL ASSOCIATIONS THEREBY SUPERCEDING CONGRESSIONAL AND EXECUTIVE BRANCH MANDATES OF EQUAL PROTECTION WITHIN INDIAN NATIONS?

2) IF THERE ARE NO LEGAL SOURCES THAT ALLOW ARTICLE III COURTS THE JURISDICTIONAL AUTHORITY TO DEMAND THAT AMERICAN INDIAN COURTS DISCRIMINATE IN THE CIVIL PROTECTIONS OF AMERICAN INDIAN NATION LAWS BASED UPON RACE OR POLITICAL AFFILIATIONS, THEN IS THIS COURT, AND ALL ARTICLE III COURTS, BOUND BY 28 U.S.C. 1738, AS 'EVERY COURT' WITHIN THE U. S. TO ENFORCE INDIAN NATION COURT ORDERS UNDER FULL FAITH AND CREDIT?

3) DOES CONGRESS HAVE THE AUTHORITY TO DEFINE THE TRUST FIDUCIARY RELATIONSHIP BETWEEN THE

FEDERAL GOVERNMENT AND THE INDIAN NATIONS BY DIVESTING INDIAN NATION'S OF THE ABILITY TO TREAT PERSONS DIFFERENTLY LEGALLY BASED UPON RACE OR POLITICAL AFFILIATION IN 25 U.S.C. 1302(8) IN THE BEST INTEREST OF THE BENEFICIARY, AND IF SO, DO ARTICLE III COURTS HAVE THE JURISDICTIONAL AUTHORITY TO SUPPLANT THOSE EXPRESS CONGRESSIONAL DIVESTITURES WITH THIS COURT'S MANDATE TO DEMAND AMERICAN INDIAN COURTS GIVE PRESUMPTIONS AGAINST JURISDICTION OVER ALL NON-INDIANS AS FOUND IN *MONTANA V. U. S.* AND ITS PROGENY ?

*REFERENCES TO THE PETITION FOR AN EXTRAORDINARY WRIT APPENDIX IS LISTED AS PET. FOR EW APP. .

PARTIES TO THE PROCEEDINGS

Petitioners

Mr. Fred Riggs, Navajo Nation enrolled member C# 18570, residing and working within the Navajo Nation, injured within the Navajo Nation borders.

Mr. Al Dickson, Navajo Nation enrolled member C#212,765, residing and working within the Navajo Nation, injured within the Navajo Nation borders.

Mrs. Donna Singer, married to a Navajo Nation member, residing outside the Navajo Nation, but injured while within the Navajo Nation borders.

All petitioners here are also petitioners in Docket No. 02-1253.

Respondents

San Juan County, 'County', constituent organization, organized under Utah Code 17-50-101 et seq. that SHALL control the San Juan Health Services District (§17A-2-1313(2)) and can withdraw powers from any District governance board member or employee at any time under Utah Code 17A-2-1326 (6).

San Juan Health Services District, 'District', constituent organization, organized under Utah Code 17A-2-1301 –1332.

San Juan County Commissioner Ty Lewis, officer of San Juan County, under Utah Code 17-16-6, and

previous San Juan Health Services District board member, named officially and personally.

San Juan County Commissioner Lyn Stevens, officer of San Juan County, under Utah Code 17-16-6 ,official capacity only, since January 1, 2003, under Navajo and Federal Rule of Civil Procedure at Rule 25.

San Juan County Commissioner Manuel Morgan, officer of San Juan County, under Utah Code 17-16-6, official capacity only, since January 1, 2003, under Navajo and Federal Rules of Civil Procedure at Rule 25.

Bill Redd, previous San Juan County Commissioner, and Health Services District board member, originally named personally and officially, and currently, personally only.

San Juan County Attorney Craig Halls, official under Utah Code 17-18-1, named officially and personally.

San Juan County administrator Richard Bailey and previous San Juan Health District CEO, under 17A-2-1313(2)(a), named officially and personally.

San Juan Health Services District administrative control board member, County appointed , Karen Adams, under Utah Code 17A-2-1326, named personally and officially.

San Juan Health Services District administrative control board member, County appointed, Grant Imel, under Utah Code 17A-2-1326 named officially only under Navajo and Federal Rules of Civil Procedure at Rule 25.

San Juan Health Services District administrative control board member, County appointed, Nettie Prack, under Utah Code 17A-2-1326, named officially only under Navajo and Federal Rules of Civil Procedure at Rule 25.

San Juan Health Services District administrative control board member, County appointed, Cleal Bradford, under Utah Code 17A-2-1326, named officially only, under Navajo and Federal Rules of Civil Procedure at Rule 25.

John Lewis, previous San Juan Health Services District administrative control board member, under Utah Code 17A-2-1326, named both officially and personally, and currently personally.

Roger Atcitty, Navajo Nation enrolled member, previous San Juan Health Services District administrative control board member, under Utah Code 17A-2-1326, named officially and personally, and now personally only.

Previously Commissioner Mark Maryboy and Patsy Shumway were named in their official capacities only, and have since left office and are no longer parties.

Reid Wood, previous San Juan Health Services District executive and employee, under Utah Code 17A-2-1313(2), named personally and officially, and currently personally.

Lauren Schafer is sued as an executive of San Juan Health Services District is named personally and officially.

John Hart, current San Juan District CEO, named official capacity only under Navajo and Federal Rules of Civil Procedure at Rule 25.

Truck/Farmer's Insurance Company the company who had a 1 million dollar bond on Montezuma Creek Clinic that covered Navajo employees at the clinic, and Navajo Respondent Roger Atcitty, and previous Navajo County Commissioner Mark Maryboy, and employed Mr. Ickes.

Mr. R. Dennis Ickes named in his personal capacity who was hired and represented the respondents, and interests of Truck Insurance.

And any other Jane and John Does, and any agent or assigns for the above named Respondents, all named jointly and severally.

All respondents, by implication or expressly, filed cross-petitions in Docket no. 02-1444 (County) and 02-1445 (District).

Undisputedly, all respondents in the initial Navajo Nation court action filed two answers, with counterclaims of fraud, theft and the like against Mrs. Singer, seeking Navajo Nation court protection. (EW P. Ap. 23a, 35a, 45a). These were FALSE counterclaims, but nevertheless, they were counterclaims wherein the Respondents paid the Navajo Court filing fee for Navajo Court services seeking Navajo protection for Navajo common law claims.

Additional Parties Below

Dr. Steven MacArthur, Michele Lyman, Helen Valdez, Candace Laws, Paul Kieth, Dorothy Kieth, Baxter Benally, Percy Mitchell, Melvin Capitan, Candace Holiday, Eva Pleasant, Amy Terlaak and Linda Cacapardo were additional *Federal* Court Plaintiffs, but were not parties to the Navajo Nation Court action.

Cleal Bradford, John Housekeeper, Gary Holiday, Dr. James Redd, Dr. Val Jones, Dr. Manfred Nelson, Marilee Bailey, Ora Lee Black, Laurie Wallace, Carla Grimshaw, Gloria Yanito and Julie Bronson were additional *Federal* Court defendants below, for *federal and state* claims, but were not parties to the Navajo Nation Tribal Court.

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PETITION FOR CERTIORARI AND OTHER PETITIONS

A petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit. Docket 02-1253 denied June 2, 2003. A petition for an Extraordinary Writ of Mandamus and Prohibition for enforcing the Navajo Orders under 28 U.S.C. § 1738 was filed as Docket no. 02-1774 and denied on October 6, 2003.

JURISDICTION

This Court has jurisdiction under Article III and by Supreme Court Rule 44 and by way of 28 U.S.C. §1738.

OPINIONS BELOW

The opinion of the United States Court of Appeals Tenth Circuit *MacArthur et al v. San Juan County et al*, 309 F.3d 1216 (10th Cir. 2002) is 10th cir. docket no. 01-4001 entered on October 7, 2002. The opinions of the United States Utah District court dismissing the respondents from the Navajo Court action on October 30, 2000 (P. E.W. Ap.p 169a), December 13, 2000 (P. E.W. App. 195a) is District Court docket no. 2:00 CV 0584. The four Navajo Court orders found in the Petition for an Extraordinary Writ of Mandamus found in the appendix at pages 1a-55a.

NEW CASE LAW-NEW COURT PETITION

After oral argument at the Tenth Circuit Court in this case, the Utah Supreme Court overturned the portion of the Utah Governmental Immunity Act relating to governmental discretionary functions, Utah Code Ann. § 63-30-2(4)(a), as in violation of Utah's open courts

provisions. This portion of the Utah code can not be relied upon to immunize the respondents.1

On September 30, 2003 this Court granted the petition in *U.S. v. Lara*, Docket no. 03-107. This case deals with Congressional authority, and thus the Court's authority also, to define Indian Nation jurisdiction in the criminal context. We are asking for this Court to also define these same jurisdictional parameters in the civil context.

LIMITATIONS OF THIS PETITION

Under Rule 44 -1 as substantial grounds not previously presented" and new case law on the question of the Constitutional separation of powers and subject matter jurisdiction of Article III courts to supercede Congress, the Executive Branch and American Indian Nations reserved inherent sovereignty mandates upon Indian Nation Courts to apply their laws equally to all 'persons' without consideration of race or political affiliations. Case law not presented previously will be presented here.

Separation of Powers Subject Matter Jurisdiction Challenge. The fact that the parties did not raise any question of Article III subject matter jurisdiction can not constitute a waiver since subject

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1 Further, Article VI makes treaties superior to all other law, even sections of the Constitution, save Congress limiting them by express acts such as the Indian Civil Right Act. See, *U.S. v. Forty-Three Gallons of Whiskey*, 1876 U.S. LEXIS 1368,*;93 U.S. 188; 23 L. Ed. 846;3 Otto 188 and *MacArthur* fn. 5.

> "A treaty, as the law of the land, is superior to any State legislation, and is valid even as a municipal regulation, until superseded by some act of Congress. Ware v. Hylton, 3 Dall. 236; Taylor v. Morton, 2 Curtis, C.C. 454; 1 Story on Const., sect. 1838; Worcester v. Georgia, supra."

Whiskey at LEXIS * 7-8

matter of the Courts can not be consented to and thus overridden by the parties. **"Such an error may be raised by a party, and indeed must be noticed *sua sponte* by a court, at all points in the litigation.... [citations omitted]"**. See, *Freytag et al v. Commissioner*, 1991 U.S. LEXIS 3818,*49-50;501 U.S. 868; 111 S. Ct. 2631;115 L. Ed. 2d 764. J. Scalia concurrence. There is no authority for an Article III Court to reject a subject matter jurisdictional question that is inherent in the Petitioners Petition for an Extraordinary Writ of Mandamus, equal protection and due process clause.

No less than Dred Scott in 1856, in *Scott v. Sanford*, 1856 U.S. LEXIS 472,*;60 U.S. 393; 15 L. Ed. 691;19 HOW 393, these petitioners are seeking to exercise their treaty-promised rights, immunities and privileges and protections under duly enacted and BIA-sanctioned Navajo law *as guaranteed* by 1) inherent sovereignty of the Navajo Nation to enact and enforce its own laws, and to apply the protection of those Navajo laws within Navajo borders equally under the United States-Navajo treaties of 1849 and 1868, 2) the United States-Navajo International Treaties of 1849 and 1868, 3) the International Treaties of the a) United Nations Charter Declaration Chapter IX on non-self governing Territories and b) United Nation International Covenant on Civil and Political Rights UNICPCR 2200A (XXI) of 16 December 1966 entry into force 23 March 1976 demanding Courts of the signature parties be open to 'everyone'; 4) the Indian Civil Rights Act 25 U.S.C. 3202(8), 5) executive order 13175 November 6, 2000 mandating that regulations and statutes be interpreted favorably as by the Indian Nations; 6) the BIA- Judicial Program contract that DEMANDS that the Navajo Nation apply Navajo law

in a uniform and fair fashion within its borders. All these sources of law unanimously MANDATE equal protection of Indian Nation law and presume Indian Nation Courts are capable of treating nonIndians fairly. There are no legal sources for an Article III court to override the Article VI 'supreme law of the land'.

THREE SEPARATION OF POWER JURISDICTIONAL ISSUES ARE INHERENT IN THE PETITIONERS' PETITION

ISSUE 1: THIS COURT OR ANY OTHER ARTICLE III COURT HAS *NO* CONSTITUTIONAL ORIGINAL JURISDICTION OR CONGRESSIONALLY DELEGATED OR OTHER LEGAL RESOURCES UPON WHICH TO RELY FOR SUBJECT MATTER JURISDICTIONAL AUTHORITY TO DEMAND THAT AMERICAN TREATY-PROTECTED INDIAN COURTS CIVILLY DISTRIBUTE JUSTICE UNDER AMERICAN INDIAN LAWS BASED UPON RACE OR POLITICAL ASSOCIATIONS THEREBY SUPERCEDING ARTICLE I CONGRESSIONAL AND ARTICLE II EXECUTIVE BRANCH UNANIMOUS MANDATES TO PROVIDE EQUAL PROTECTION OF THE LAW WITHIN AMERICAN INDIAN NATION GOVERNANCE.

APPLICABLE LAW IN SUPPORT OF SUPREME COURT AUTHORITY TO DEMAND THAT AMERICAN TREATY-PROTECTED INDIAN NATIONS DISCRIMINATE IN DISTRIBUTING THE PROTECTIONS OF INDIAN NATION LAWS BASED ON RACE OR POLITICAL AFFILIATIONS AS FOUND IN *U.S. V. MONTANA* AND PROGENY

The jurisdiction of the Supreme Court has two prerequisites to jurisdiction that must be present: first, the Constitution must have given the courts the capacity to receive it (*Marbury v. Madison*, 1803 U.S. LEXIS 352,*19-20;5 U.S. 137;2 L. Ed. 60;1 Cranch 137, and, second, an act of Congress must have conferred it

on the Court [2]. **There are no such Constitutional or Congressional legal resources to support the Article III Courts in presumptions against jurisdiction over non-Indians** based upon race or political affiliations as found in the special tests for non-Indians in *Montana v. U. S.*, 1981 U.S. LEXIS 9,*;450 U.S. 544;101 S. Ct. 1245;67 L. Ed. 2d 493 and its progeny.

Alternatively, *National Farmer's Union Insurance Co. et al v. Crow et al,* 1985 U.S. LEXIS 27, *, 471 U.S. 845; 105 S. Ct. 2447; 85 L. Ed. 2d 818 (1985) requires an Indian Nation Court jurisdictional analysis by examining "statutes, Executive Branch policy as embodied in treaties and elsewhere, and administrative or judicial decisions." See, *MacArthur et al v. San Juan County et al,* 2002 U.S. App. LEXIS 20987, *34, 307 F.3d 1216. All unanimously support equality before Navajo Courts particularly for counterclaiming non-Indian respondents.

Currently, under Supreme Court rulings, if two Navajo members are civilly assaulted in the Navajo borders, if one is assaulted by a nonIndian, under a *Nevada v. Hicks*, 533 U.S. 353 (2001) ruling, there may be no relief. Under Congressional Indian Civil Rights Act mandate, both receive equal relief, particularly as here, if the non-Indian stipulates to the Indian Court jurisdiction by filing Indian common law counterclaims and FULLY litigating them.

The Tenth Circuit Court found "[25 U.S.C.] Section 1302 is an *express divestiture* of tribal authority [to discriminate], providing, among other things, that

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2 The *Mayor v. Cooper*, 73 U.S. (6 Wall.) 247, 252 (1868); *Cary v. Curtis*, 44 U.S. (3 How.) 236 (1845); *Sheldon v. Sill*, 49 U.S. (8 How.) 441 (1850); *United States v. Hudson & Goodwin*, 11 U.S. (7 Cr.) 32, 33 (1812);

no Indian tribe may "deny *any person* within its jurisdiction the equal protection of its laws or deprive *any person* of liberty or property without due process of law." 25 U.S.C. § 1302(8); see also *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 57, 56 L. Ed. 2d 106, 98 S. Ct. 1670 (1978) [*22] (stating that in § 1302, "Congress acted to . . . impose certain restrictions upon tribal governments similar, but not identical, to those contained in the Bill of Rights and the Fourteenth Amendment"). " *MacArthur*, *21-22 .

ISSUE 2: IF THERE ARE NO LEGAL SOURCES THAT ALLOW ARTICLE III COURTS THE AUTHORITY TO DEMAND THAT AMERICAN INDIAN COURTS DISCRIMINATE IN THE CIVIL PROTECTIONS OF AMERICAN INDIAN NATION LAWS BASED UPON RACE OR POLITICAL AFFILIATIONS, THEN THIS COURT, AND ALL ARTICLE III COURTS, ARE BOUND BY 28 U.S.C. 1738.

There is no legal source of law upon which the Supreme Court or any other Article III Court can rely to avoid being included in the term 'every Court' for enforcing the laws of "states, territories and possessions." 28 U.S.C. §1738 an Art. III duty.

The Ninth Circuit of *Wilson v. Marchington*, 1997 U.S. App. LEXIS 25994,*4;127 F.3d 805; 97 Cal. Daily Op. Service 7553;97 Daily Journal DAR 12175 labeled several hundred American Indian Nation sovereigns as 'foreign countries'. Ms. Piestewa, Mike Nolene, and Fred Riggs' Uncle died in American wars for both their Native *American* Nations. Art. I sec. 8 clearly identifies "Indian tribes" as distinct from "foreign countries".

Halwood v. Cowboy Auto Sales, 946 P. 2d 1088 (N. M. s. ct. 1997) cert. denied docket no 98-858 Feb. 22, 1999 is exactly opposite of *Marchington*. Both *Halwood*

and *Marchington* were refused Certiorari and present a split in authority for enforcement of American Indian Court orders that should be addressed now, and can be addressed now, as a jurisdictional issue.

ISSUE 3: CONGRESS HAS THE AUTHORITY TO DEFINE THE TRUST FIDUCIARY RELATIONSHIP BETWEEN THE FEDERAL GOVERNMENT AND THE INDIAN NATIONS BY DIVESTING INDIAN NATION'S OF THE ABILITY TO LEGALLY TREAT PERSONS DIFFERENTLY BASED UPON RACE OR POLITICAL AFFILIATION IN 25 U.S.C. 1302(8), AND ARTICLE III COURTS HAVE NO CONSTITUTIONAL OR CONGRESSIONAL BASIS FOR JURISDICTIONAL AUTHORITY TO SUPPLANT THOSE CONGRESSIONAL DIVESTITURES.

LEGAL SOURCES SUPPORTING CONGRESSIONAL AUTHORITY TO DEFINE THE TRUST RELATIONSHIPS BETWEEN THE UNITED STATES AND INDIAN NATIONS

"The source of federal authority over Indian . . . derives from federal responsibility for regulating commerce with Indian tribes and for treaty making." *McClanahan v. Arizona Tax Comm.*, 411 U.S. 164, 172 n. 7 (1973). See also *Morton v. Mancari*, 417 U.S. 535, 551 -553 (1974). Article I section 8 provides for Congress ".. To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof". If Congress would have believed Indian Nations should give a preference against jurisdiction over an Indian law cause of action based on the race or political affiliations of the parties, Congress could have so said, did not, and in fact said the opposite in 25 U.S.C. 1302(8), Congress

desires to keep and preserve Treaty promises and guarantees. 25 U.S.C. §71.

"...[A]mbiguities in federal law should be construed generously, and federal pre-emption is not limited to those situations where Congress has explicitly announced an intention to pre-empt state activity." *Ramah Navajo School Board v. Bureau of Revenue of New Mexico*, 458 U.S. 832, 838 (1982). In *Montana*, Petitioners assert this Court effectively negated Congress' acts made in the best interest of the fiduciary beneficiary, making non-Indians and states the new beneficiary of a heretofore unknown fiduciary duty for federal courts to protect.

See, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 65- 66 (1978).

> "Tribal forums are available to vindicate rights created by the ICRA, and 1302 has the substantial and intended effect of changing the law which these forums are obliged to apply. Tribal courts have repeatedly been recognized as appropriate forums for the exclusive adjudication of disputes affecting important personal and property interests of **both Indians and non-Indians**. See, e. g., Fisher v. District Court, 424 U.S. 382 (1976); Williams v. Lee, 358 U.S. 217 (1959). See also Ex parte Crow Dog, 109 U.S. 556 (1883). Nonjudicial tribal institutions have also been recognized as competent law-applying bodies.

Id. *See also*, fn. 20-22. [3] Emphasis Added.

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3 Congress and the Executive presumes Indian Judges can be fair to all persons, this Court does not and has not since the divestiture

FURTHER REASONS FOR GRANTING THIS PETITION FOR A REHEARING

One widely accepted definition of genocide is found in the **Convention on the Punishment and Prevention of the Crime of Genocide Article II referring to** "(b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; ". The respondents were fully aware that billing I.H.S. and Medicaid patients were driving them from their care at Montezuma Creek clinic on or about May 14, 1999. Pet. For E. W. at 46a. Despite this full knowledge, the respondents kept billing them and preying upon their ignorance and fears with full knowledge of their harms. Petitioners have no idea how many patients have been without their required constant meds such as anti-depressants, TB medication, and the like dialysis numbers are up. Pet for EW app. 146a - 148a.

The Navajo Judge fact finder is in the best place to understand how to best provide relief for Navajo law violations and Indian Civil Rights Act violations. *Santa Clara* at fn. 20-22.

"We are all too often reminded that "**justice delayed is justice denied.**"" *McMullin v. Bay Ship Management*, 2003 U.S. App. LEXIS 12609,*9-10;335 F.3d 215;55 Fed. R. Serv. 3d (Callaghan) 1193. Judicial

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doctrine in *Oliphant v. Swuamish Indian Tribe*, 1978 U.S. LEXIS 66, *26; 435 U.S. 191; 98 S. Ct. 1011 through *Nevada v. Hicks* in 2001. Since 1978 through today, Congress and the Courts have gone their separate ways. Federal funding that can be removed from Indian Judicial programs for unfair treatment is substantial financial incentive to provide fair and uniform protection of Indian Nation laws.

economy in all courts across the country is fostered by examining Congress' authority in civil Indian law *at the same time* as Congress' authority in criminal law as in *U.S. v. Lara*, docket no. 03-107.

CONCLUSION

Based upon the foregoing, Petitioners pray for the Court to reevaluate their decision to not grant their petition, not give them an opportunity for redress to enforce their Navajo Court orders, and to further subject them to years of appeals at great expense.

Respectfully submitted,

Mr. Wm. Battles
(Navajo Counsel on the Brief)

Susan Rose, Esq.
Counsel of Record
9553 South Indian Ridge Drive
Sandy, Utah 84092
Phone/Fax 801-545-0441
Attorney for Petitioners

CERTIFICATE OF THE GOOD FAITH OF THE ATTORNEY

I, Susan Rose, counsel for the Petitioners, hereby certify that this petition for a rehearing is not being brought for the purposes of delay or in bad faith. Further, this petition is brought in the interest of the highest judicial economy for hundreds of federal and American Indian Nation Courts and the Petitioners who will be subjected to years of appeals if the conflicts here are not addressed at this time.

Respectfully Submitted,

Susan Rose, Attorney for the Petitioners.